

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL EDWARD DURAN,

Plaintiff,

v.

M. ROSS, A. VALDEZ, and E. PARKS,

Defendants.

Case No. 1:21-cv-01096-HBK (PC)

ORDER NOTING VOLUNTARY
DISMISSAL UNDER FED. R. CIV. P.
41(a)(1)(A)(i) OF CERTAIN DEFENDANTS
AND CLAIMS

ORDER DIRECTING CLERK TO REVISE
DOCKET TO REFLECT ONLY NAMED
DEFENDANT

(Doc. No. 11)

Plaintiff Paul Duran, a prisoner, is proceeding pro se and *in forma pauperis* in this action filed under 42 U.S.C. § 1983. On July 25, 2023, this Court issued a screening order on Plaintiff's First Amended Complaint. (Doc. No. 10, "FAC"). As discussed in the July 25, 2023 Screening Order, the FAC states a cognizable Eighth Amendment excessive use of force claim against Defendant Ross, but no other claim. (Doc. No. 10 at 1). Specifically, the Court found the FAC did not state any cognizable claim against Defendants Valdez or Parks. (*Id.* at 8). The Screening Order afforded Plaintiff the opportunity to (1) file an amended complaint; (2) file a notice under Rule 41 that he is willing to proceed only on the claims the court found cognizable in its screening order; or (3) stand on his FAC subject to the undersigned issuing Findings and Recommendations to dismiss the defendants and claims not cognizable. (*Id.* at 11-12). On

1 August 23, 2023, Plaintiff filed a pleading titled “Notice Under Rule 41,” dated August 2, 2023
2 signed to under penalty of perjury stating that he “intends to stand on his current complaint as
3 screened . . . and proceed[] only on his Eighth Amendment excessive use of force claim against
4 Defendant Ross, therefore voluntarily dismissing Defendants Valdez and Parks and any other
5 claims the court deemed not cognizable.” (Doc. No. 11 at 1).

6 Plaintiff may voluntarily dismiss any defendant or claim without a court order by filing a
7 notice of dismissal before the opposing party answers the complaint or moves for summary
8 judgment. Fed. R. Civ. P. 41 (a)(1)(A)(i). Here, no party has answered or moved for summary
9 judgment. (*See* docket). Further, the Ninth Circuit recognizes a party has an absolute right prior
10 to an answer or motion for summary judgment to dismiss fewer than all named defendants or
11 claims without a court order. *Pedrina v. Chun*, 987 F.2d 608, 609-10 (9th Cir. 1993). In
12 accordance with Plaintiff’s notice, Defendants Valdez and Parks are dismissed without prejudice
13 by operation of law. Fed. R. Civ. P. 41(a)(1)(A)(i). Plaintiff’s FAC will proceed on Plaintiff’s
14 Eighth Amendment claim against Defendant Ross for excessive use of force. (*See* Doc. No. 8).
15 The Court will direct service of process on Defendant Ross by separate order.

16 Accordingly, it is **ORDERED**:

17 The Clerk of Court shall correct the docket to reflect Plaintiff’s notice of voluntary
18 dismissal under Rule 41(a)(1) of Defendants Valdez and Parks.
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20 Dated: September 5, 2023


21 HELENA M. BARCH-KUCHTA
22 UNITED STATES MAGISTRATE JUDGE
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